

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

IN RE: JUN ESUERTE

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No. 13-EEC-019

Appeal of OEIG
Revolving Door
Determination

DECISION

This cause is before the Executive Ethics Commission (“Commission”) on appeal by the Office of the Attorney General from a determination by the Office of the Executive Inspector General for Agencies of the Illinois Governor.

FINDINGS OF FACT

The record of proceedings has been reviewed by the members of the Executive Ethics Commission. The record consists of the Attorney General’s April 18, 2012 Brief in Support of Appeal, the Office of the Executive Inspector General for Agencies of the Illinois Governor’s April 23, 2013 Comment to the Illinois Attorney General’s Appeal of Revolving Door Determination, and the Attorney General’s April 25, 2013 Reply in Support of Appeal.

Based upon this record, the Commission makes the following findings of fact:

1. On April 8, 2013, 2012, the Office of the Executive Inspector General for Agencies of the Illinois Governor (OEIG) issued a revolving door determination pursuant to 5 ILCS 430/5-45(f) with respect to Jun Esuerte’s (Esuerte) proposed employment with Legacy Healthcare Financial Services (LHFS).
2. The determination concluded that “**you are not restricted** from accepting the employment opportunity described in your materials by the Revolving Door prohibitions of the State Officials and Employees Ethics Act.” (emphasis in original).
3. On April 18, 2013, the Office of the Illinois Attorney General filed a brief in support of its appeal.
4. Esuerte has been employed by the Illinois Department of Public Health since 2000. He serves as a Health Facility Surveillance Nurse.
5. As a Health Facility Surveillance Nurse, he was responsible for surveying (inspecting) nursing homes for compliance with State and federal regulations for long-term care facilities.

6. On March 1, 2013, Esuerte was offered a position as Regional Quality Assurance Nurse for LHFS.
7. In the past twelve months, Esuerte participated in inspections of the following five facilities relevant to this appeal: Peterson Park, Chalet Living, Grove of Lincoln Park, Grove of Evanston and Grove of Skokie.
8. During the year prior to his termination of State employment, Esuerte performed the acts listed below, which constitute participation in making a regulatory or licensing decision that directly applied to his prospective employer:
 - a. participating in a survey of Peterson Park on 4/13/12
 - b. participating in surveys of Chalet Living on 4/26/12 and 1/3/13
 - c. participating in surveys of Grove of Lincoln Park on 5/3/12 and 10/14/12
 - d. participating in a survey of Grove of Evanston on 7/26/12
 - e. participating in a survey of Grove of Skokie on 1/23/13
9. LHFS has relationships with the five facilities that Esuerte inspected. The ethics officer concludes that the facilities are either owned or operated by LHFS. Company logos for the five facilities appear on the LHFS web site. According to supplemental information provided by the OEIG investigative report, each facility is independently owned and LHFS operates as a manager of each facility. The facilities and LHFS all have the same two managers/principals. The facilities' company logos appear on the LHFS web site. An attorney for LHFS indicated that LHFS provides bookkeeping, consulting and various other financial services.
10. According to LHFS's own statement from its Regional Director of Operations, LHFS "employees or agents (or its subsidiary, parent or affiliate entities) interact[ed] with [Esuerte]. AG's Brief in Support of Appeal, p. 40.
11. According to LHFS's own statement from its Regional Director of Operations, LHFS "was directly affected by [] licensing or regulatory actions taken by the state agency with which the state employee or former state employee was affiliated." In its explanation for this statement, LHFS noted that Esuerte conducted annual inspections of facilities including facilities for "which Legacy Healthcare Financial Services, LLC provides services." AG's Brief in Support of Appeal, pp. 40-41.
12. On his "State Employee or Former State Employee Form (RD-101), Esuerte himself checked "yes" to the question, "In the year prior to termination of State employment, did you participate personally and substantially in making a regulatory or licensing decision that directly applied to your prospective employer, or its parent or subsidiary?" Esuerte also noted, on the same form, that the facilities he surveyed were "facilities of Legacy Healthcare," that he had "surveyed one or two of the facilities this [sic] Legacy Healthcare own," and that he "surveyed Legacy's facilities and wrote deficiencies during surveys."

13. The offer letter from LHFS to Esuerte, dated March 1, 2013, states that Esuerte would “support our six north side facilities in the area of resident care, quality assurance, and regulatory management.” (emphasis added).
14. The Commission has sought written public opinion on this matter by posting the appeal on its website and posting a public notice at its offices in the William Stratton Building.

CONCLUSIONS OF LAW

1. An Executive Inspector General’s determination regarding revolving door restrictions may be appealed to the Commission by the person subject to the decision or the Attorney General no later than the 10th calendar day after the date of the determination. 5 ILCS 430/5-45(g).
2. The present appeal of the April 8, 2013 revolving door determination made by the OEIG pursuant to 5 ILCS 430/5-45(f) with respect to Jun Esuerte’s proposed employment is properly before the Commission and the Commission has jurisdiction to consider the appeal.
3. Subsection (b) of the revolving door section of the State Officials and Employees Ethics Act currently provides:

(b) No former officer of the executive branch or State employee of the executive branch with regulatory or licensing authority, or spouse or immediate family member living with such person, shall, within a period of one year immediately after termination of State employment, knowingly accept employment or receive compensation or fees for services from a person or entity if the officer or State employee, during the year immediately preceding termination of State employment, participated personally and substantially in making a regulatory or licensing decision that directly applied to the person or entity, or its parent or subsidiary.

5 ILCS 430/5-45(b)

4. Subsection (g) of the same section provides:

(g)...In deciding whether to uphold an Inspector General’s determination, the appropriate Ethics Commission or Auditor General shall assess, in addition to any other relevant information, the effect of the prospective employment or relationship upon the decisions referred to in subsections (a) and (b), based on the totality of the participation by the former officer, member, or State employee in those decisions.

5 ILCS 430/5-45(g)

5. The Commission is not required to find evidence of a quid pro quo or an actual effect of the prospective employment upon a licensing decision made by the employee in order to reverse a determination by the Executive Inspector General that an employee is restricted from taking a position.
6. The Ethics Act does not define “parent” or “subsidiary.”
7. The precise relationship between LHFS and the five aforementioned facilities inspected by Esuerte is not clear from the documents presented to the Commission. It appears that LHFS does not have any ownership interest in the facilities, but LHFS exercises significant control over the facilities. The facilities and LHFS all have the same two managers/principals. The facilities’ company logos appear on the LHFS web site. Despite statements to the contrary, these facts suggest that LHFS exercises much more control over the facilities than providing bookkeeping, consulting and other financial services. An LHFS official acknowledges that Esuerte had interaction with its employees or agents or its subsidiary, parent or affiliate entities. The offer letter from LHFS to Esuerte referred to him supporting our six north side facilities (emphasis added).
8. Regardless of the precise nature of the relationship between LHFS and the five facilities inspected by Esuerte, the issue before the Commission is whether Esuerte participated personally and substantially in a regulatory or licensing decision that directly applied to LHFS.
9. According to LHFS’s own statement, LHFS “was directly affected by [] licensing or regulatory actions taken by the state agency with which the state employee or former state employee was affiliated,” noting that Esuerte conducted annual inspections of facilities including facilities for “which Legacy Healthcare Financial Services, LLC provides services.” Considering the level of control LHFS appears to exercise over the facilities, this seems to be a reasonable conclusion.
10. The present matter is appropriately distinguished from McDorman, 13-EEC-001 (July 19, 2012). In McDorman, there was no admission and there was insufficient evidence that the facility seeking to employ McDorman owned or controlled the facilities that she inspected, or that it was directly affected by her inspection activity at those facilities. Also, McDorman did not inspect the facility seeking to employ her, but rather, she inspected other facilities that may or may not have been affiliated with the facility seeking to employ her.
11. During the year prior to his termination of State employment, Esuerte performed the acts listed below, which constitute participation in making a regulatory or licensing decision that directly applied to his prospective employer:
 - a. participating in a survey of Peterson Park on 4/13/12
 - b. participating in surveys of Chalet Living on 4/26/12 and 1/3/13
 - c. participating in surveys of Grove of Lincoln Park on 5/3/12 and 10/14/12
 - d. participating in a survey of Grove of Evanston on 7/26/12
 - e. participating in a survey of Grove of Skokie on 1/23/13

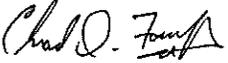
12. Considering all relevant information and the effect of the prospective employment upon the regulatory or licensing decisions referred to in subsection (b) of 5 ILCS 430/5-45, based upon the totality of the participation by the employee in those decisions, the Commission finds that Jun Esuerte participated personally and substantially in making regulatory or licensing decisions that directly applied to his prospective employer within one year of his termination of State employment.

WHEREFORE, for the foregoing reasons, the Commission grants the Attorney General's appeal and reverses the Office of the Executive Inspector General's April 8, 2013 determination. Jun Eseurte's proposed employment would violate the State Officials and Employees Ethics Act's revolving door prohibition.

ENTERED: April 26, 2013

SO ORDERED.

The Executive Ethics Commission

By: 

Chad D. Fornoff
Executive Director